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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/396,888	09/16/1999	VICTOR A. RIVAS		8050

7590 03/03/2005
JAMES C WRAY
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EXAMINER

GRIER, LAURA A

ART UNIT PAPER NUMBER

2644

DATE MAILED: 03/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/396,888	Applicant(s) RIVAS ET AL.	
	Examiner Laura A Grier	Art Unit 2644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-27 and 29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-27 and 29 is/are allowed.
- 6) ☒ Claim(s) 2-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.
2. The indicated allowability of claim 7 is withdrawn in view of the newly discovered reference(s) to Frenkel et al. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 2, 6-10** are rejected under 35 U.S.C. 103(a) as being unpatentable over Ryll and Mathews in view of Frenkel et al., U. S. Patent No. 5064410.

Regarding **claim 7**, Ryll disclose a pair of sport goggles that provides real time body monitoring information to user, wherein the information includes the heart rate of the user, which constitutes as a pair of eyeglasses for monitoring heart conditions (figure 1 and abstract); electronic circuitry (figures 1, 2 and 6 and col. 5, lines 57-65), and a battery, which indicates a power source (figure 2-reference 42). Ryll does disclose an infrared phototransistor for emitting light, and infrared detector module for receiving light (col. 5, lines 30-55, and figure 5).

However, Ryll fails to specifically disclose a plurality of lighting emitting diodes on the glasses, and a plurality of photosensors on the glasses (herein, “LEDs and photosensors”, respectively), and the light emitting diodes and photosensors positioned on a plane offset from each other. The examiner maintains that such LEDs and photosensors were well known in the art.

Regarding the LEDs and photosensors, in a similar field of endeavor, Mathews discloses a pulse responsive device which may be worn about the head of a user. Mathews device comprises a sensor unit including two light emitters and two light sensors (col. 3, lines 28-35), which constitutes as a plurality of LEDs and a plurality of photosensors, and further indicates that the light emitters and light sensors are positioned in a plane offset from each other, respectively, a light emitter and a light sensor are positioned accordingly (figure 2, references 20 and 22 – light emitters, and references 21 and 23 – light sensors).

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Ryll by providing a plurality of light emitters (LEDs) and light sensors (photosensors) for the purpose of enhancing eyewear for optimal functions as desired for analyzing the electrical signal of the output of the light emitter/light sensor on a continuous basis, regarding a particular parameter such as pulse rate, etc. as taught by Mathews.

Further Ryll and Mathews fails to disclose a plurality of lamps on the glasses for indicating a sensed condition of a user.

Regarding the plurality of lamps, Frenkel discloses eyeglasses that including a pair of LEDs (19A/B) that illuminates based upon a user sensed physiological condition (abstract and col. 4, lines 3-7), wherein the LEDs may constitute as a plurality of lamps.

Thus, it would have been obvious to one of the ordinary skill in the art at the time the invention was made to modify the invention of Ryll and Mathews by providing a plurality of LEDs (lamps) for the purpose of indicating to the user the current physical state of his/her heart rate or pulse rate.

Regarding **claim 2**, Ryll, and Mathews and Frenkel (herein, Ryll et al.) discloses everything claimed as applied above (see claim 7). Ryll further discloses a battery, which constitutes a power supply.

Regarding **claims 8 and 9**, Ryll et al. discloses everything claimed as applied above (see claim 7). Ryll discloses display (48) in respect to figure 8 that provides a display which may be used in sports goggles for indicated a sensed condition, including a numerical display of the user's heart rate and pulse (col. 6, lines 61-67 and col. 7, lines 1-41).

Regarding **claim 10**, Ryll et al. discloses everything claimed as applied above (see claim 7). Mathews further discloses mean of inputting preset data of the user to be used for comparing the sensed condition (col. 4, lines 4-54).

It would have been obvious to one of the ordinary skill in the art at the time the invention was made to modify the invention of Ryll by providing a means of inputting preset data of the user to be used for comparing the sensed condition, providing optimal monitoring techniques of the users pulse rate.

Regarding **claim 6**, Ryll et al. discloses everything claimed as applied above (see claim 7). Mathews further discloses transmitting a sensed signal to a read-out device (col. 3, lines 42-44), which is indicative of a remote receiver.

It would have been obvious to one of the ordinary skill in the art at the time the invention was made to modify the invention of Ryll by providing a radio transmitter for transmitting a sensed signal to the device located on the wrist of the user for providing free the sensed signal of noise as taught by Mathews or other desired reasons for the optimizing the function of the device.

5. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ryll et al. and further in view of Vogt.

Regarding **claims 3 and 4**, Ryll et al. discloses everything claimed as applied above (see claim 7). However, Ryll fails to specifically disclose the power supply as a solar cell.

Regarding the solar cell, Vogt et al. discloses a pair of eyeglasses with a power supply consisting of at least one solar cell with a solar panel, and further Vogt discloses the solar cell in conjunction with a battery (col. 7, lines 20-33).

It would have been obvious to one of the ordinary skill in the art at the time the invention was made to modify the invention of Ryll by providing a solar cell for the power source for the purpose of utilizing the readily available solar energy and converting it into electrical energy and thus making the device of Ryll energy efficient.

Allowable Subject Matter

6. Claims 11-27 and 29 are allowed.

Response to Arguments

7. Applicant's arguments filed 1/4/05 have been fully considered but they are not persuasive.

The applicant's arguments/remarks was directed the amended changes of the claims in respect to previously indicated allowable subject matter. However, due further consideration of claim language. A new reference of prior art has been provided to modify the teachings of Ryll and Mathews that provides a teaching of illumination devices for indicating a sensed physical condition of a user wearing a pair of eyeglasses.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura A Grier whose telephone number is (703) 306-4819. The examiner can normally be reached on Monday - Friday, 7:30 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh N Tran can be reached on (703) 305-4040. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Laura A. Grier", written in a cursive style.

Laura A. Grier
March 1, 2005